IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C)3466/2005

MODI RUBBER LIMITED .... Petitioner through
Mr. V. Seshagiri with
Ms. Roopali Singh,
Advs.

Versus

GOVT. OF NCT OF DELHI ...Respondent through
Mr. Sanjeev Kumar,
Adv. for Respondents 2-3

Date of Hearing : April 21, 2007

Date of Decision : April 27, 2007

CORAM:
HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE J.P. SINGH

1. Whether reporters of local papers may be allowed to see the Judgment? No

2. To be referred to the Reporter or not? Yes

3. Whether the Judgment should be reported in the Digest? Yes

J U D G M E N T

VIKRAMAJIT SEN, J.

1. This Writ Petition under Article 226 of the Constitution of India has been filed by Modi Rubber

Limited (MRL) praying for the issuance of a writ, order or direction in the nature of certiorari quashing the Recovery Notice No.:29/Sales Tax/ACJ/DCLY/04 of the Assistant Collector Ist, Grade-II, South, Government of NCT of Delhi, which reads as follows:

NOTICE

Court of Shri J.S. Sharma Asstt. Collector Ist/IInd Grade

Room No.5 Office of the Deputy Commissioner (South) Abdul Hamid Marg, (M.B. Road) Saket, New Delhi

Case No.29/Sales Tax/ACJ/DCLY/04

Sh. V.K. Modi, Vice-Chairman/MD

M/s Modi Rubber Limited

7-C, DDA Shopping Centre

New Friends Colony, New Delhi

Whereas a sum of Rs.2206815/- on account of Trade Tax for Haldwani is recoverable from you as arrears of land revenue.

You are hereby directed to deposit these dues by 7/2/2005 failing which further action for the realisation of the dues will be taken against you.

Asstt. Collector I/IInd Grade

Delhi

2. On the hearing held on 22.1.2007 we had, after hearing arguments of learned counsel for the parties, put it to learned counsel for the Petitioner that the Noticee-Director of the Company ought to have approached directly. Learned counsel for the Respondent had vehemently contended that the Notice is not addressed to the Petitioner herein but to an individual, namely, Shri V.K. Modi and adopting of this course was legally competent rather than take any remedial action. Learned counsel for the Petitioner has only repeated all the submissions made by him on the last date of hearing.

3. In brief, the submission of Shri Sheshagiri, learned counsel for the Petitioner, is that the Petitioner has approached the BIFR. As on date its Reference has been registered. Reliance has been placed on the decision in *Tata Davy Ltd. -vs- State of Orissa*, (1997) 6 SCC 669 which, however, does not advance the case of the Petitioner since in the present case Notice has not been issued to the Petitioner but to a third party albeit a Director of the Company. We also find no justification in Mr. Seshagiri's

reliance on the views expressed by one of us (Vikramajit Sen, J.) in *Industrial Development Bank of India Ltd. -vs- Company Law Board*, (2006) 5 Comp LJ 444(Del) in respect of discussion of a person falling within the sweep of the term 'aggrieved person'. The observations made were in totally different circumstances. The simple fact is that Shri V.K. Modi could have and ought to have approached this Court directly. Prima facie, however, we are of the view that the proper recourse would have been to appear before the Officer who issued the impugned Notice and to present to him the stand preferred before us. The Writ Court should not be used as a device to by-pass the obvious and logical course of action.

4. Our attention has correctly been drawn to the decision in *Kailash Nath Agarwal -vs- Pradeshiya Industrial & Investment Corporation of U.P. Ltd.*, (2003) 4 SCC 305 in which it has been opined that the object of the Sick Industrial Companies (Special Provisions) Act, 1985 is the facilitation of rehabilitation or winding up of sick companies and not the protection of any other person or

body. Learned counsel for the Respondent has placed reliance on the following three Judgments of the Division Bench of the Allahabad High Court:-

(1) *Naresh Chander Gupta -vs- The District Magistrate*, 2003 NTN (Vol.23)-358
(2) *Sri Ram Gupta -vs- The Assistant Collector*, 2003 NTN (Vol.23)-995
(3) *Sri Ram Shyam Shukla -vs- Assistant Collector, Collection of Trade Tax*, 2004 NTN (Vol.25)-768

5. In all these cases the U.P. Trade Tax Act, 1948 had been invoked for the recovery of outstanding taxes. The Bench observed that such cases justify lifting of the corporate veil; that the concept of the corporate personality was evolved to encourage trade and business and not for committing illegality or defrauding the exchequer.

6. It is trite that the exercise of writ jurisdiction must always be predicated on equity. In the present case MRL has collected Sales Tax but has not deposited it with the State. It is thus guilty of breach of trust since all monies collected by it towards Sales Tax should have been made

over to the State. These are not ordinary commercial dealings. The circumstances of the case, therefore, do not warrant the exercise of the extraordinary powers vested in this Court under Article 226 of the Constitution of India even if MRL is held to be competent of filing the present Petition.

7. However, the impugned Notice has been issued to Shri V.K. Modi. It is he who should have come forward either in these proceedings or before the Sales Tax Department, with the submission that the recoveries cannot be made personally from him in respect of dues of the Company. We see no reason to interfere in the matter.

8. Petition is dismissed.

(VIKRAMAJIT SEN)
JUDGE

(J.P. SINGH)
JUDGE

April 27, 2007
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